

## ORDINANCE NO. 242-08

BY: **SCOTT M. TUMA**

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$5,800,000 CITY OF PARMA, OHIO, HEALTHCARE FACILITIES REVENUE BONDS, SERIES 2008 (CATHOLIC CHARITIES FACILITIES CORPORATION), FOR THE PURPOSE OF PAYING COSTS OF CERTAIN HEALTHCARE FACILITIES OF CATHOLIC CHARITIES FACILITIES CORPORATION AT PARMADALE; AUTHORIZING AND APPROVING RELATED MATTERS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Parma, Ohio, a municipal corporation and political subdivision of the State of Ohio, is authorized and empowered by virtue of the laws of the State, including without limitation, Chapter 140 of the Ohio Revised Code (the "Act"), among other things: (i) to acquire, construct, improve, furnish and equip hospital facilities; (ii) to enter into lease agreements to provide for the lease of hospital facilities to a nonprofit hospital agency; (iii) to issue its revenue bonds for the purpose of financing costs of hospital facilities and refunding obligations issued for that purpose, (iv) to secure those revenue bonds by a trust indenture, by the pledge and assignment of the rent paid under the lease agreement and the funds created under the trust indenture; and (v) to enter into the Bond Indenture, the Base Lease, the Lease, the Assignment and the Bond Purchase Agreement identified in this Ordinance and to sign and deliver certain other documents upon the terms and conditions identified in this Ordinance; and

WHEREAS, in response to the request of Catholic Charities Facilities Corporation, a nonprofit corporation organized under the laws of the State (the "Corporation"), the Council has determined that it is willing to authorize the issuance and sale of revenue bonds under the Act in the maximum principal amount of \$5,800,000 to finance (i) "costs of hospital facilities" within the meaning of the Act, including costs of acquisition, construction, furnishing, equipping and other improvements relating to the new residential intensive treatment centers, a multi-purpose center, a new medical clinic, administrative offices and related facilities for or pertaining to the diagnosis, treatment, care or rehabilitation of sick, ill, injured, infirm or impaired persons on the Parmadale campus of the Corporation (collectively, the Project") and (ii) costs of issuance of the Bonds.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma, County of Cuyahoga, Ohio that:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this Ordinance, or by reference to the Lease or the Indenture, capitalized words used in this Ordinance shall have the following meanings, unless the context or use indicates clearly another meaning or intent:

"Act" means Chapter 140, Ohio Revised Code, as in effect from time to time.

"Assignment" means the Assignment of Rights Under a Lease dated as of September 1, 2008, between the Issuer and the Trustee.

"Base Lease" means the Base Lease dated as of September 1, 2008, between the Corporation, as lessor, and the Issuer, as lessee, as duly amended or supplemented from time to time.

"Bond Counsel" means the firm of Tucker Ellis & West LLP or another firm of attorneys nationally recognized as having expertise with respect to the validity of obligations of states, political subdivisions and other public bodies and the treatment for federal income taxation purposes of interest on those obligations.

"Bond Purchase Agreement" means the Bond Purchase Agreement among the Issuer, the Corporation and the Original Purchaser.

"Bond Service Charges" means, for any period or date, the principal of and premium, if any, and interest on the Bonds accruing for that period or due and payable on that date, whether due at maturity or upon redemption or acceleration.

"Bonds" means the Healthcare Facilities Revenue Bonds, Series 2008 (Catholic Charities Facilities Corporation) of the Issuer authorized in this Ordinance in a maximum principal amount not to exceed \$5,800,000.

"Book Entry Form" or "Book Entry System" means a form or system, as applicable, under which (i) physical Bond certificates in fully registered form are issued only to a Depository or its nominee as registered owner, with the physical Bond certificates deposited and retained in the custody of the Depository and (ii) the ownership of book entry interests in Bonds and Bond Service Charges thereon may be transferred only through a book entry made by others than the Issuer or the Trustee. The records maintained by others than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book entry interests in those Bonds and Bond Service Charges thereon.

"Certificate of Award" means the Certificate of Award of the Issuer awarding the Bonds to the Original Purchaser, as provided for in this Ordinance, and specifying certain terms of the Bonds in accordance with this Ordinance.

"Code" means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations (whether proposed, temporary or final) under that Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

"Corporation" means Catholic Charities Facilities Corporation, a nonprofit corporation duly organized and validly existing under the laws of the State.

"Credit Facility Issuer" means, initially, RBS Citizens, National Association, and upon the effectiveness of any Alternate Credit Facility pursuant to and as defined in the Indenture, shall mean the issuer thereof.

"Debt Service Fund" means the Debt Service Fund and the accounts therein created in the Indenture.

"Depository" means The Depository Trust Company (a limited purpose trust company), New York, New York, until a successor Depository shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities Depository that is a clearing agency under a federal law operating and maintaining, with its participants or otherwise, a Book Entry System to record ownership of book entry interests in Bonds or Bond Service Charges thereon, and to effect transfers of book entry interest in Bonds.

"Holder" or "Holder of a Bond" means the person in whose name a Bond is registered.

"Indenture" means the Bond Indenture, dated as of even date with the Lease, between the Issuer and the Trustee, as amended or supplemented from time to time.

"Interest Payment Date" or "Interest Payment Dates" shall have the meaning given to that term in the Indenture.

"Issuer" means the City of Parma, Ohio, a municipal corporation duly organized and validly existing under the Constitution and the laws of the State.

"Issuer Documents" means this Ordinance, the Indenture, the Lease, the Base Lease, the Assignment and the Bond Purchase Agreement. When reference is made to the execution and delivery of the Issuer Documents, the reference with respect to this Ordinance means instead its adoption.

"Lease" means the Lease dated as of September 1, 2008, between the Issuer and the Corporation, as amended or supplemented from time to time.

"Official Statement" means the disclosure document relating to the original issuance and sale of the Bonds.

"Original Purchaser" means Fifth Third Securities, Inc., Cleveland, Ohio.

"Project" means the Project as defined in the Recitals and as otherwise defined in the Lease.

"Project Fund" means the Project Fund created in the Indenture.

"Rebate Fund" means the Rebate Fund created in the Indenture.

"Remarketing Agent" means, initially, Fifth Third Securities, Inc., Cleveland, Ohio and any other entity meeting the qualifications of, and designated from time to time to act as, Remarketing Agent under the Indenture.

"Remarketing Agreement" means the Remarketing Agreement between the Corporation and the Remarketing Agent, dated as of September 1, 2008.

"Special Funds" means the Debt Service Fund and the Project Fund and the accounts therein.

"State" means the State of Ohio.

"Trustee" means U.S. Bank National Association, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, "Trustee" shall mean the successor Trustee.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof.

Section 2. Determinations. This Council finds and determines, based upon the information provided and representations made by the Corporation, that:

(a) The facilities to be financed by the Bonds constitute "hospital facilities" as defined in Section 140.01(E) of the Act;

(b) The Corporation is an Ohio nonprofit corporation and a "nonprofit hospital agency," as defined in Section 140.01(C) of the Act; and

(c) Issuing the Bonds to pay costs of the Project will advance the purposes of the Act, including better providing for the health and welfare of the residents of the Issuer and the State by enhancing the availability, efficiency and economy of hospital facilities so that hospital facilities and the services rendered thereby continue to be available to or for the service of the general public without discrimination by reason of race, creed, color or national origin and at the lowest possible cost.

Section 3. Public Approval. This Council, as the "applicable elected representative" of the Issuer for purposes of Section 147(f) of the Code, hereby approves the issuance of the Bonds in the maximum principal amount of \$5,800,000.

This Council also determines that, following reasonable notice, and prior to passage of this Ordinance, a public hearing was held with respect to the issuance of the Bonds, as required by Section 147(f) of the Code.

Section 4. Authorization of Bonds. This Council finds and determines that the Issuer shall issue, sell and deliver, as provided herein and in the Indenture and pursuant to the authority of the Act, the Bonds in the principal amount not to exceed \$5,800,000 for the purposes of paying costs of hospital facilities within the meaning of the Act, including the Project, and expenses incurred in connection with the issuance of the Bonds.

Section 5. Terms and Provisions of the Bonds.

(a) General. The Bonds shall (i) be designated "City of Parma, Ohio Healthcare Facilities Revenue Bonds, Series 2008 (Catholic Charities Facilities Corporation)", (ii) be issuable only in fully registered form and initially in Book Entry Form and substantially as set forth in Exhibit A to the Indenture, (iii) be exchangeable only for Bonds of the same maturity and authorized denominations, as provided in the Indenture, subject to the limitations with respect to Bonds in Book Entry Form set forth in the Indenture, (iv) be numbered in a manner determined by the Trustee that will distinguish each Bond from each other Bond, (v) be in authorized denominations as provided in the Indenture, (vi) bear interest at variable rates of interest as provided in the Indenture, payable on each Interest Payment Date, from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their date, and (vii) be dated as of their date of issuance and delivery.

(b) Maturities, Interest Rates and Redemption Terms. The Bonds initially shall bear interest at the rate determined by the Remarketing Agent pursuant to the Indenture. Thereafter, the Bonds shall bear interest at the Weekly Rate determined by the Remarketing Agent until any conversion to the Other Rate or the Term Rate, all as defined and provided in the Indenture. The Bonds shall mature in the years and in the principal amounts, and shall be payable as to principal on the dates, all as determined in the Certificate of Award to be executed by the Mayor or the Auditor of the Issuer (the "Certificate of Award"). The Certificate of Award shall provide for the final terms of the Bonds, including the aggregate principal amount of the Bonds, subject to the following: (i) the initial variable rate on the Bonds shall not exceed 8% per year, (ii) the first interest payment date shall be not later than six months from the date of delivery of the Bonds, and (iii) the last principal payment date shall not be later than December 31, 2030. This Council authorizes the Remarketing Agent to fix and establish the interest rates in effect from time to time on the Bonds in the manner and pursuant to the provisions of the Indenture and the Remarketing Agreement. Proceeds of the Bonds may be used to pay the initial fees and expenses incurred by the Remarketing Agent.

The Bonds may be tendered for purchase by the Holders thereof on such dates, in such manner and at such prices as set forth in the Indenture. The Bonds and the payment of the purchase price of Bonds tendered for purchase shall be initially secured by an irrevocable direct-pay letter of credit issued by the Credit Facility Issuer. The initial fees and expenses of the Credit Facility Issuer related to the delivery of the letter of credit are authorized to be paid from proceeds of the Bonds.

The Bonds may be subject to optional redemption prior to maturity on the dates, in the years and at the redemption prices (expressed as a percentage of the principal amount redeemed) as set forth in the Indenture, plus accrued interest to the redemption date. The Bonds shall be subject to extraordinary optional redemption and mandatory sinking fund redemption prior to maturity as provided in the Indenture.

The Bonds shall be signed by the Mayor and the Auditor of the Issuer in their official capacities (provided that any or all of those signatures may be facsimiles). In case any officer whose signature or a facsimile thereof appears on the Bonds shall

cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until after that time.

(c) Book Entry System. The Bonds initially shall be issued solely in book entry form to the Depository Trust Company ("DTC") to be held in a book entry system as provided in the Indenture. There shall be a single Bond representing each maturity, and such Bonds shall be registered in the name of DTC or its nominee, as holder, and immobilized in the custody of DTC. The Bonds in book entry form shall not be transferable or exchangeable, except for (i) transfer to a successor to DTC or its nominee, (ii) withdrawal of the Bonds in book entry form from DTC as provided in the Indenture, and (iii) exchange of a Bond in book entry form for a Bond in book entry form in the amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate and maturing on the same date as, the Bond being exchanged. The owners of book entry interests in the Bonds shall not have any right to receive Bonds in the form of physical certificates except in the circumstances described in the Indenture.

Section 6. Sale of the Bonds. The Bonds are sold and awarded to the Original Purchaser in accordance with the terms of this Ordinance, the Indenture and the Bond Purchase Agreement at the purchase price set forth in the Bond Purchase Agreement. The purchase price shall be not less than 98% of the aggregate principal amount of the Bonds plus any accrued interest on the aggregate principal amount of the Bonds from their date to the date of their delivery and payment therefor by the Original Purchaser.

The Mayor, the Clerk of Council and the Auditor are authorized and directed, alone or together, to make the necessary arrangements with the Original Purchaser to establish the date, location, procedures and conditions for the delivery of the Bonds to the Original Purchaser and to take all steps necessary to effect due execution, authentication and delivery of the Bonds to the Original Purchaser under the terms of this Ordinance, the Indenture and the Bond Purchase Agreement.

The Issuer consents to the distribution of an Official Statement relating to the Bonds substantially in the form submitted to this Council. Except to the extent described in the Official Statement, the Issuer has not confirmed, and assumes no responsibility for, the accuracy, completeness, sufficiency or fairness of any statements in the Official Statement or any amendments thereof or supplements thereto, or in any reports, financial information, offering or disclosure documents or other information relating to the Original Purchaser, the Project, the Credit Facility Issuer, the Corporation or the history, businesses, properties, organization, management, financial condition, market area or any other matter relating to the Corporation or the Project or contained otherwise in the Official Statement.

Section 7. Allocation of Proceeds of Bonds and Transfer of Funds. The proceeds of the sale of the Bonds shall be received by the Trustee on the Issuer's behalf and shall be paid or deposited as follows:

(a) to the Credit Facility Issuer, the amount due for payment of the initial fees and expenses of the Credit Facility Issuer;

(b) to the Issuance Expense Fund, the amounts necessary to pay fees and expenses related to the issuance of the Bonds; and

(c) to the Project Fund created under the Indenture, the balance of the proceeds of the Bonds.

All funds, accounts and subaccounts required under the Indenture are authorized to be created and shall be used without further legislative action for the purposes specified in the Indenture.

Section 8. Sources of Payment and Security for the Bonds. The Bonds shall be special obligations of the Issuer and the Bond Service Charges on the Bonds shall be equally and ratably payable solely from the Basic Rent under and as defined in the Lease and the Special Funds. The Bonds shall be equally and ratably secured by the Indenture, by a pledge of and lien on the Basic Rent and the Special Funds, and by the absolute and irrevocable assignment to the Trustee of the Issuer's interest in the Special Funds and all rights of the Issuer under the Lease except for the Unassigned Rights, all as provided in the Lease, the Indenture and the Assignment. The Bonds shall be further secured by the irrevocable direct-pay letter of credit issued by the Credit Facility Issuer.

The Bonds do not and shall not represent or constitute general obligations, debt, bonded indebtedness or a pledge of the moneys, faith and credit of the Issuer, the State or any other political subdivision of the State. The Holders of the Bonds shall not have the right to have excises, ad valorem or other taxes levied by the Issuer or by the State or the taxing authority of any other political subdivision for the payment of Bond Service Charges on the Bonds. The Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the Basic Rent and the Special Funds and from any other moneys paid by the Corporation or obtained by the Trustee upon the exercise by it of rights and remedies under the Indenture and the Lease.

Section 9. Covenants and Agreements of Issuer. In addition to the other covenants of the Issuer herein and in the Issuer Documents, the Issuer further covenants and agrees as follows:

(a) Authority and Actions. The Issuer is, and upon delivery of the Bonds will be, duly authorized by the laws of the State, particularly and without limitation the Act, to issue the Bonds, to execute and deliver the Issuer Documents and other instruments and documents to which it is a party, to provide the security for payment of the Bond Service Charges on the Bonds in the manner and to the extent set forth in this Ordinance and in the Indenture, all as authorized by this Council. All actions on the part of the Issuer for the issuance of the Bonds and the execution and delivery of the Issuer Documents and such other instruments and documents as are authorized herein have been or will be duly and effectively taken. The Bonds will be valid and enforceable special obligations of the Issuer according to their terms. Each duty of the Issuer and of its officers and employees undertaken pursuant to the Bonds and the Issuer Documents is binding upon the Issuer and each of those officers and employees having authority thereunder or by provision of law to perform the duty, and resulting from an office, trust or station, within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(b) Arbitrage Provisions; Transcript. The Issuer covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, the Auditor or the Clerk of this Council or any other officer of the Issuer having responsibility for the issuance of the Bonds, alone or in conjunction with the Corporation or any officer, employee, agent of or consultant to the Corporation, shall give an appropriate certificate of the Issuer for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the Issuer regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

Upon the request of the Corporation, the Mayor, the Auditor or the Clerk of Council is authorized on behalf of the Issuer (i) to identify any interest rate hedge agreement designated by the Corporation to be entered into in connection with the Bonds pursuant to Treasury Regulation Section 1.148-4 (h), and (ii) to take such other actions as may be necessary in order to achieve integration of any such hedge agreement and the Bonds for the purpose of calculating the yield on the Bonds in accordance with the Code.

The Issuer covenants that it (i) will take, or require to be taken, all actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes under the Code, and (ii) will not take or authorize to be taken any actions that would adversely affect that exclusion. The Mayor, the Auditor, the Clerk of Council and other appropriate officers of the Issuer are hereby authorized and directed to take any and all actions and make or give such reports and certifications as may be appropriate to assure such exclusions of that interest. The Issuer hereby authorizes the Corporation to file, on behalf of the Issuer, any forms or reports required under the Code; provided that copies of any such forms or reports will be provided to the Issuer.

The Clerk of this Council shall furnish to the Original Purchaser a true transcript of proceedings, certified by the Clerk of this Council, of all proceedings had with reference to the issuance of the Bonds, together with such information from the records as is necessary to determine the regularity and validity of the issuance of the Bonds.

(c) Further Assurances. The Issuer shall do all things and take all actions on its part necessary to comply with obligations, duties and responsibilities on its part under the Issuer Documents. Nothing herein or in the Issuer Documents shall be construed as requiring the Issuer to operate the Project or to use any moneys from any source other than the Basic Rent, the Additional Payments and the Special Funds (all as defined in the Lease).

Section 10. Issuer Documents. To provide for the issuance and sale of the Bonds and the consummation of the transactions contemplated herein, the Mayor, the Auditor, the Treasurer, the Clerk of Council and any other appropriate officer of the Issuer alone or in conjunction with any of the foregoing officers, is authorized and directed to execute, acknowledge and deliver, for and in the name and on behalf of the Issuer, each Issuer Document in substantially the respective forms thereof submitted to this Council.

The Issuer Documents are approved with changes which are not inconsistent with this Ordinance which are not substantially adverse to the Issuer, which are permitted by the Act, which are approved as to form by the Director of Law and which are approved by the officer or officers executing the respective Issuer Documents. The approval of those changes by the officer or officers and the character of those changes, as not being adverse to the Issuer, shall be evidenced conclusively by the execution and delivery of the respective Issuer Documents by the officer or officers.

The Mayor, the Auditor, the Treasurer, the Clerk of Council and any other appropriate officer of the Issuer are each separately authorized to take any and all actions and to execute such additional documents, certificates and other instruments that may be necessary or appropriate in order to effect the issuance of the Bonds, the financing of the Project and the intent of this Ordinance.

Section 11. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Bond, or in the Issuer Documents, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer or employee as such, past, present, or future, of the Issuer, including any member of this Council, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or employee, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the Corporation or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Issuer Documents and the issuance of the Bonds.

Section 12. Lien of Pledge Hereunder. As provided in Section 140.06(D) of the Act, the Basic Rent and the Special Funds are subject to the lien of the pledge under the Indenture without any physical delivery of the Basic Rent and the Special Funds or further act, and the lien of that pledge is valid and binding against all parties having claims of any kind against the Issuer or the Corporation (irrespective of whether those parties have notice of such pledge), and creates a perfected security interest for all purposes of Chapter 1309, Ohio Revised Code, without the necessity for separation or delivery of the Basic Rent and the Special Funds or for the filing or recording of this Ordinance, the Indenture or any other Ordinance or instrument by which that pledge is created or any certificate, statement or other document with respect to that pledge. The pledge of and lien on the Basic Rent and the Special Funds under the Indenture shall be effective and the money therefrom and therein may be applied to the purposes for which pledged without necessity for any further act of appropriation.

Section 13. Compliance with Open Meeting Requirements. It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions, were in meetings open to the public in compliance with all legal requirements.

Section 14. Emergency Clause. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Issuer, and for the further reason that the immediate issuance of the Bonds is necessary to provide for the payment of the Project under the current favorable market conditions and thereby obtain cost savings and enhance the availability, efficiency and economy of hospital facilities within the City; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor, otherwise from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_ APPROVED: \_\_\_\_\_  
CLERK OF COUNCIL

FILED WITH  
THE MAYOR: \_\_\_\_\_  
MAYOR, CITY OF PARMA, OHIO